

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT L. JOHNSTON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:11-CV-1214-SNLJ
)	
FUGITIVE FELON COMMITTEE,)	
DEPARTMENT OF VETERANS AFFAIRS,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the application of Robert L. Johnston for leave to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. Therefore, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

The complaint

Plaintiff seeks monetary relief in this action against the "Fugitive Felon Committee, Department of Veterans Affairs." Plaintiff claims that defendant denied him benefits under the Fugitive Felon Act, because its records erroneously showed that he had outstanding warrants.

Upon review, the Court notes that the assertions set forth in the instant complaint and amended complaint are identical to those plaintiff alleged in three previously-filed cases that this Court dismissed as legally frivolous under 28 U.S.C. § 1915(e)(2)(B). See Johnston v. Fugitive Felon Committee, Cause No. 4:11-CV-616-SNLJ (E.D. Mo.); Johnston v. Fugitive Felon Committee, Department of Veterans Affairs, Cause No. 4:10-CV-1775-SNLJ (E.D. Mo.); Johnston v. Department of Veterans Affairs, Cause No. 4:10-CV-1357-SNLJ (E.D. Mo.). Moreover, the named defendant in the instant case is identical to the defendants named in the earlier two cases. As such, the instant complaint will be dismissed as frivolous and malicious under § 1915(e)(2)(B). See Aziz v.

Burrows, 976 F.2d 1158, 1158-59 (8th Cir. 1992); Van Meter v. Morgan, 518 F.2d 366, 368 (8th Cir. 1975).

In accordance with the foregoing,

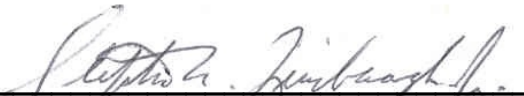
IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint, because the complaint is legally frivolous and malicious. See 28 U.S.C. § 1915(e) (2) (B).

IT IS FURTHER ORDERED that plaintiff's pro se motions [Docs. #4, #5, and #7] are **DENIED** as moot.

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 4th day of August, 2011.


UNITED STATES DISTRICT JUDGE